

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is effective as of 22nd day of September, 2016, by and between The Government of the Virgin Islands, acting through its Department of Property and Procurement on behalf of the Department of Public Works ("Government"), and the Board of Trustees of the University of Alabama, for and on behalf of the University of Alabama ("University"), and its Office of Archaeological Research, 152 Rose Administration, Box 870104, Tuscaloosa, Alabama 35487, collectively referred to as the ("Parties").

### PURPOSE

WHEREAS, Government is in need of the services of a Contractor to perform archaeological monitoring during the earth change associated with the infrastructural improvements of Route 308, or Main Street, which duties and responsibilities are more particularly described in Addendum I (Scope of Work) attached hereto; and the Contractor was selected in accordance with 31 VIC 239(a)(4),

WHEREAS, the University represents that it is willing and capable of providing such services;

### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

#### 1. SERVICES

University will provide the services described in Addendum I (Scope of Work) attached hereto and made a part of this Agreement.

#### 2. TERM

Upon the execution of this Agreement by the Governor of the United States Virgin Islands, the Term of this Agreement shall commence on September 22, 2016 and shall terminate on September 30, 2019.

#### 3. COMPENSATION

Government, in consideration of the performance of the services as described in Addendum I (Scope of Work), agrees to pay University an amount not to exceed Seven Hundred Fifty- Four Thousand, Seven Hundred Fifty Dollars and Ninety Cents (\$754,750.90). Payments shall be made as set out in Addendum II attached hereto and made a part of this Agreement.

#### 4. TERMS OF PERSONNEL

Government will oversee activities performed under this Agreement, with Government having the authority for final approval of all work performed under this Agreement. Government shall designate an individual to coordinate the work under this Agreement. Government designates the following individual in this capacity:

Name: Kenneth Benjamin

Title: Construction Program Manager

Office of Highway Engineering  
VI Department of Public Works  
8244 Subbase  
St. Thomas, VI 0082  
Email: Kenneth.Benjamin@dpw.vi.gov

University shall commence work September 29, 2016. University shall designate an individual to coordinate the work under this Agreement. University designates the following individual in this capacity:

Name: Dr. Brooke Persons  
Office of Archaeological Research  
University of Alabama  
13075 Moundville  
Archaeological Park  
Moundville, Alabama 35474  
Email: abpersons@ua.edu

#### **5. TRAVEL EXPENSES**

Inclusive of the compensation for services as specified in Paragraph 3 (Compensation), the Government agrees to pay documented transportation, lodging and other travel expenses while in travel status for trips which have been authorized in writing in advance by the Government through the Department of Public Works (DPW), said costs shall not exceed Eighteen Thousand Fifty-Three and 00/100 Dollars (\$18,053.00). Per diem costs shall be reimbursed at the Federal rate for St. Thomas (\$339.00 for lodging plus \$110.00 for meals and incidentals).

#### **6. RECORDS**

University, when applicable, will present documented precise records of time and/or money expended under this Agreement.

#### **7. PROFESSIONAL STANDARDS**

University and its representatives agree to maintain the professional standards applicable to their profession and to consultants doing business in the United States Virgin Islands.

#### **8. DOCUMENTS, PRINTOUTS, ETC.**

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived therefrom and pertaining to this Agreement shall become the property of Government and shall be turned over to it at the termination of this Agreement. The above described materials shall not be used by University or by any other person or entity except upon the written permission of Government.

#### **9. LIABILITY OF OTHERS**

Nothing in this Agreement shall be construed to impose any liability upon the Government of the Virgin Islands to persons, firms, associations, or corporations engaged by University as servants, agents, or independent

contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations, or corporations for the acts, omissions, liabilities, obligations and taxes of University of whatsoever nature, including but not limited to unemployment insurance and social security taxes for University, its servants, agents or independent contractors.

#### **10. ASSIGNMENT**

University shall not subcontract or assign any part of the services or assign any of its rights under this Agreement, except as otherwise provided in this Agreement, without the prior written consent of Government.

#### **11. INDEMNIFICATION**

To the extent permitted by law, University agrees to indemnify, defend and hold harmless the Government of the Virgin Islands from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorney's fees) and causes of action of whatsoever character which the Government of the Virgin Islands may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by University under this Agreement and arising from any cause, except the sole negligence of the Government.

#### **12. INDEPENDENT CONTRACTOR**

University and its representatives shall perform this Agreement as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

#### **13. GOVERNING LAW**

The performance of work under this Agreement shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

#### **14. ENABLING LAWS**

Nothing in this Agreement is intended to cause either party hereto, The University of Alabama or the United States Virgin Islands to waive the legal immunities and defenses provided under their state and federal laws.

#### **15. WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Agreement, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

#### **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This Agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

## **17. RIGHT TO WITHHOLD**

If work under this Agreement is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to University, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify University in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the Government if and while University gives satisfactory assurance to the Government that such claims will be paid by University or its insurance carrier, if applicable, in the event that such contest is not successful.

## **18. CONDITION PRECEDENT**

This Agreement shall be subject to the availability and appropriation of funds and to the approval of the Governor of the United States Virgin Islands.

## **19. TERMINATION**

Either party will have the right to terminate this Agreement with or without cause on thirty (30) days written notice to the other party specifying the date of termination.

## **20. PARTIAL TERMINATION**

The performance of work under this Agreement may be terminated by either party whenever the party shall deem such termination advisable by sending a thirty (30) day notice of termination. Any partial termination shall be effected by delivering to the other party a Notice of Partial Termination specifying the extent to which the term and/or duties under this Agreement are terminated and the date upon which such termination becomes effective. University shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the thirty (30) day notice.

## **21. NON-DISCRIMINATION**

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Agreement on account of race, creed, color, sex, religion, disability or national origin.

## **22. NOTICE**

Any notice required to be given by the Terms of this Agreement shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

### **GOVERNMENT:**

Lloyd T. Bough, Jr.  
Commissioner  
Department of Property and Procurement  
8201 Subbase, Third Floor  
St. Thomas, VI 00802

Nelson M. Petty, Jr.  
Commissioner  
Virgin Islands Department of Public Works  
8244 Sub Base  
St. Thomas, VI 00802

**UNIVERSITY:**

Cynthia Hope  
Assistant Vice President for Research  
University of Alabama  
13075 Moundville Archaeological Park  
Moundville, Alabama 35474

**23. LICENSURE**

University through its representatives covenants that it has:

- (a) obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code; and
- (b) familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

**24. DEBARMENT CERTIFICATION**

By execution of this Agreement, University certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. University shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event University or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, University or subcontractor agrees that it shall not be entitled to payment for any work performed under this Agreement or any subcontract and that University or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made.

**25. FALSE CLAIMS**

University warrants that it shall not, with respect to this Agreement, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. University acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

**26. NOTICE OF FEDERAL FUNDING**

University acknowledges that this Agreement is funded, in whole or in part, by Federal Highway funds. University warrants that it shall not, with respect to this Agreement, make or present any claim knowing such claim

to be false, fictitious, or fraudulent. University acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

## **27. FORFEITURE**

Failure by University to satisfactorily perform the terms of the Agreement shall result in the forfeiture of unexpended monies.

## **28. CONFLICT OF INTEREST**

(a) University, through its representatives, covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

(b) University, through its representatives, further covenants that it is:

(1) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or

(2) a territorial officer or employee and, as such, has:

- (i) familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
- (ii) not made, negotiated or influenced this Agreement, in its official capacity;
- (iii) no financial interest in the Agreement as that term is defined in section 1101(1) of said Code chapter.

## **29. AUTHORIZED SIGNATORY**

Any person signing this Agreement represents and warrants that he or she has authority and capacity to sign on behalf of said party, and to make the covenants and promises set forth in this Agreement.

## **30. SEVERABILITY**

If any provision of this Agreement or the application thereof is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement will be inoperative.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:



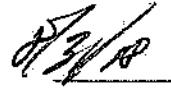
GOVERNMENT OF THE VIRGIN ISLANDS



Lloyd T. Bough, Jr.

Commissioner

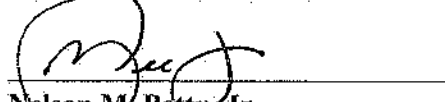
Department of Property and Procurement



Date

GOVERNMENT OF THE VIRGIN ISLANDS





Nelson M. Petty, Jr.

Commissioner

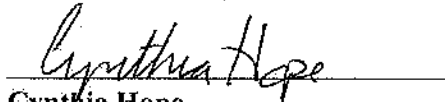
Department of Public Works

8/13/18

Date

CONTRACTOR, UNIVERSITY OF ALABAMA





Cynthia Hope

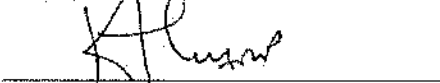
Asst. Vice President of Research

University of Alabama

8/10/18

Date

APPROVED:



Date: 09-07-18

Kenneth E. Mapp

GOVERNOR OF THE VIRGIN ISLANDS

APPROVED AS TO LEGAL SUFFICIENCY

DEPARTMENT OF JUSTICE BY:

  
AAG

Date 9/5/18

PURCHASE ORDER NO.:

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of Contract No. \_\_\_\_\_ entered into between the Government of the Virgin Islands Department of Property and Procurement on behalf of the Department of Public Works and the Board of Trustees of the University of Alabama.